



The Comptroller General
of the United States

Washington, D.C. 20548

25th July - PL

Decision

Matter of: Target Financial Corporation
File: B-226683
Date: June 29, 1987

DIGEST

1. A protest of the use of an oral solicitation and of deficiencies in the oral solicitation should have been filed prior to the proposal due date.
2. Protest contending agency never advised protester of cutoff date for revision of its proposal is denied where record shows agency informed protester it needed answers to questions by specific time and date to complete its evaluation of protester's proposal.
3. Protest that proposal was improperly excluded from the competitive range is untimely when not filed with the contracting agency or General Accounting Office within 10 days after protester was notified of the reason for its exclusion.
4. Protest that agency failed to hold meaningful discussions before eliminating proposal from competitive range is without merit where agency sent protester questions that should have led the protester into the areas of its proposal needing amplification, and protester was given opportunity to revise proposal with responses to these questions.
5. Protester is not entitled to recover proposal preparation costs or costs of filing and pursuing protest where protest is found to be without merit.

DECISION

Target Financial Corporation (TFC) protests award of a contract to Harris Corporation, Lanier Business Products, Inc. (Harris-Lanier) under request for proposals (RFP) No. DEA-87-0827, issued by the United States Department of Justice, Drug Enforcement Administration (DEA) for a 90-day lease of 130 word processing systems, including training and maintenance.

We dismiss the protest in part and deny it in part.

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DEA, in telephone conversations with Harris-Lanier and TFC on January 23, 1987, requested offers in writing by January 30, 1987, for the word processing systems. DEA explained that this was an oral solicitation, made on an urgent basis, and that the exact locations for the systems were unknown, but that the machines would be scattered in ones and twos in many locations nationwide. Both Harris-Lanier and TFC submitted proposals by the due date. On February 9, 1987, DEA telefaxed a set of questions to both vendors, requesting responses by February 12, 1987. Offerors were advised by the same telefax that proposals would be evaluated on the following factors listed in descending order of importance:

- Delivery within ten (10) calendar days after contract award
- Maintenance
 - . response time
 - . availability of replacement parts
- Training
- Price

Both offerors submitted timely responses to DEA's request for clarifications. DEA telephonically notified TFC on February 27, 1987 that its offer was unsuccessful based on price, and followed up with a written notice dated March 12, 1987 stating that TFC's offer was eliminated from the competitive range based on price, and that no revision of its proposal could be considered. TFC protested to DEA on March 17, 1987, contending that it never received a written description of the equipment, that it was denied user site locations, and that it was never advised of a closing date for receipt of proposals. DEA denied the protest on March 20, 1987, and TFC protested to our Office on April 3, 1987.

The protest against the oral solicitation constitutes a protest of an alleged solicitation impropriety which, under our Bid Protest Regulations, must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1986); see Bellevue Bus Service, Inc., B-219814.3, Oct. 11, 1985, 85-2 CPD ¶ 407. Similarly, TFC's objection to the absence of a list of locations where the equipment would be used also should have been filed prior to proposal submission. See EHE National Health Services, Inc., 65 Comp. Gen. 1 (1985), 85-2 CPD ¶ 362. TFC's protest on these grounds to DEA is therefore untimely since it was not filed until after the January 30, 1987 closing date. Where, as here, a protest is first filed with the contracting agency, a subsequent protest to our Office will be considered timely only if the initial protest was timely.

4 C.F.R. § 21.2(a)(3). Since TFC's initial protest to the agency was not timely filed, this portion of its protest subsequently filed with our Office is also untimely and will not be considered. Arctic Energies Ltd., B-224672, Nov. 17, 1986, 86-2 CPD ¶ 571.

TFC also contends that it was never advised of a cutoff date for revision of its proposal, and that it believed it could revise its proposal up until it received the March 12 written notice from DEA that no revision of its proposal could be considered.

Our review of the record, however, shows that DEA's February 9, 1987 request for additional information to offerors stated the evaluation criteria, noted that DEA had reviewed the proposal, asked for answers to specific questions "In order to complete our evaluation of your proposal," and stated that "your response to these questions should be received . . . no later than 4:00 p.m. on February 12, 1987." We think it is clear from the telefax that February 12, 1987 was a common cutoff date for all offerors. An extension to only TFC would violate the requirement for a common cutoff date for all offerors. See Sunset Realty Sales Associates, B-221390, Mar. 31, 1986, 86-1 CPD ¶ 303.

TFC also objects to exclusion of its proposal from the competitive range, contending that, had it known the locations for the equipment, it could have removed some of the deficiencies in its maintenance proposal as well as lowered its price. We find this portion of TFC's protest untimely. As stated earlier, TFC's objection to the lack of information about equipment locations should have been raised before the closing date for receipt of proposals. Furthermore, DEA notified TFC by telephone on February 27, 1987 that its offer was unsuccessful based on price. Although TFC contends it was not informed it was excluded from consideration from award until March 12, it acknowledged in a letter dated February 27, 1987 "the news that we were not the successful bidder on subject RFP." Our Bid Protest Regulations require that a protest be filed with the contracting agency, or this Office, not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986); Arctic Energies Ltd., *supra*, at 3. Since TFC's protest was not filed with our Office until April 3, 1987, 25 working days after it learned of its exclusion from the competitive range on the basis of price, its protest on this basis is untimely and will not be considered.

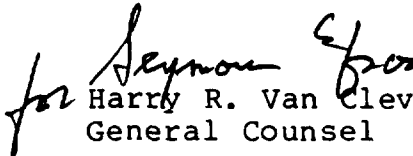
TFC also protests that DEA's list of questions to TFC did not constitute meaningful discussions because the same general questions were asked of Harris-Lanier.

We find this charge without merit. The form and extent of discussions necessary to satisfy the requirement for meaningful discussions is a matter of judgment primarily for determination by contracting officials and is not subject to question by our Office unless shown clearly to be without a reasonable basis. BDM Corp., B-201291, June 26, 1981, 81-1 CPD ¶ 532. We have rejected the notion that agencies are obligated to afford offerors all-encompassing negotiations. All that is necessary is that agencies lead offerors into areas of their proposals needing amplification. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563. We have upheld an agency's use of a letter requesting "clarification" and containing questions which led the offeror to the areas of its proposal that the agency deemed deficient. See Arthur D. Little, Inc., B-213686, Aug. 3, 1984, 84-2 CPD ¶ 149.

The record shows that DEA's project office needed additional information to evaluate proposals, and posed questions for vendors about quantity discounts, installation charges and timeframes, method for providing maintenance, and termination timeframes. The questions asked by DEA concerning these matters should have led TFC into areas needing amplification under the stated evaluation factors. Since TFC was given an opportunity to revise its proposal with responses to these questions, DEA met its obligation to hold meaningful discussions. See Tidewater Health Evaluation Center, Inc., *supra* at 4.

TFC requests that it be awarded its proposal preparation costs and the costs of filing and pursuing the protest. Recovery of such costs is allowed only when the protest is found to have merit. 4 C.F.R. § 21.6(d) (1986); Technology Incorporated; B-223999, Nov. 4, 1986, 86-2 CPD ¶ 517. Since we have dismissed in part and denied in part the protest, we also deny TFC's request for costs.

The protest is dismissed in part and denied in part.


for Harry R. Van Cleve
General Counsel